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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 145

ROXANNE TANNEHILL,

versus

THOMAS W. ROBERTS, ET AL

PETITION FOR A WRIT OF CERTIORARI TO REVIEW A DECISION OF THE COURT OF APPEAL, FOURTH CIRCUIT, STATE OF LOUISIANA

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SUPREME COURT OF THE UNITED STATES
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No. _____

ROXANNE TANNEHILL

versus

THOMAS W. ROBERTS, ET AL

MOTION FOR LEAVE TO FILE A PETITION FOR WRIT OF CERTIORARI

Now into court, through undersigned counsel, comes Roxanne Tannehill, petitioner before this court seeking issuance of a writ of certiorari who moves this honorable court for leave to file such petition in accordance with Rule 31 of the rules of this Supreme Court.

ORDER

IT IS ORDERED that Roxanne Tannehill, be allowed to file the attached petition for a writ of certiorari.

May ____, 1969.

_____
JUSTICE, UNITED
STATES SUPREME
COURT

CERTIFICATE

I certify that a copy of the foregoing motion to file a petition for a writ of certiorari was mailed to Earnest L. O'Bannon, and Steven T. Victory, who, besides attorneys for mover are all of the attorneys of record in this matter, prior to the filing of this motion with this Supreme Court.

May ____, 1969

DONALD V. ORGAN
DONALD M. PIERCE
Attorney for Roxanne Tannehill

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

No. _____

ROXANNE TANNEHILL

versus

THOMAS W. ROBERTS, ET AL

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Roxanne Tannehill is petitioning this Honorable Court for a writ of certiorari to review specifically a judgment of the Fourth Circuit Court of Appeal for the State of Louisiana rendered on December 2, 1968 as well as its refusal to grant a rehearing on January 6, 1969. A certified copy of the record of the Appeals Court is attached hereto as well as a copy of the refusal of the Supreme Court of the State of Louisiana to grant a writ of certiorari dated February 28, 1969.

GROUNDS FOR JURISDICTION OF THIS SUPREME COURT

The statutory provision conferring jurisdiction on this

court to review the judgment of the Fourth Circuit Court of Appeals for the State of Louisiana by writ of certiorari is provided in U.S.C.A. 28:1257 (3) specifically:

> "* * * Where the validity of a state statute is drawn in question on the ground of its being repugnant to the constitution, treaties, or laws of the United States * * *"

This Supreme Court, is also empowered to issue all writs necessary or appropriate in aid of its respective jurisdiction under U.S.C.A. 28:1651 (A) (B)

Petitioner is seeking to have the judgment of the Fourth Circuit Court of Appeals for the State of Louisiana rendered on December 2, 1968 and its refusal on January 6, 1969 to grant a rehearing, in which request for rehearing the deprivation of Federal Constitutional issues was raised, reviewed by this Supreme Court inasmuch as she has exhausted all remedies of the State of Louisiana available to her, when the Supreme Court of the State of Louisiana, on February 28, 1969 refused a writ of certiorari to review the judgment of the Appeals Court.

Because of said refusal of the Louisiana Supreme Court to review the Federal questions involved, petitioner has no other recourse but to this Supreme Court under the laws of the State of Louisiana and the United States of America.

QUESTIONS PRESENTED FOR REVIEW

1. Did the reversal, based upon fact only, by the Appeals Court for the State of Louisiana of a trial jury's finding of fact for which relator had paid the statutory fees constitute a deprivation of property or a vested property right without due process as guaranteed by the Fourteenth Amendment to the United States Constitution?

2. Is Article VII, Paragraph 29 of the Constitution of the State of Louisiana repugnant to the Fourteenth Amendment of the United States Constitution or the Due Process Clause thereof because it sanctions a factual review and reversal of jury verdicts rendered at the trial level when the litigants have paid special fees and costs to have the factual issues resolved by a jury?

3. Having paid special fees for a jury decision, does the litigant then have a vested right to a jury decision to the extent that it could not be taken away from the litigant solely because an appellate court disagreed with the facts found by the jury; and, would such vested right constitute property that cannot be taken away without due process?

CONSTITUTIONAL PROVISION, STATUTES, ETC.

United States Constitution

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law,* nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution, United States of America, Amendment 14, Section 1; U.S.C.A. Constitution, Amendment 14, Sec. 1, Page 3, 4

Louisiana Constitution

"The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the Civil District Court for the Parish of Orleans, or the District Courts throughout the State, have exclusive original jurisdiction, regardless of the amount involved, or concurrent jurisdiction exceeding one hundred dollars, exclusive of interest, and of which the Supreme Court is not given jurisdiction, except as otherwise provided in this Constitution, *and all appeals shall be both upon the law and the facts."*

Constitution, State of Louisiana, Article 7, Par. 29, Louisiana Statutes Annotated; Constitution Vol. 2, Pg. 280.

STATEMENT OF THE CASE

Petitioner, Roxanne Tannehill, filed suit against various defendants in the Civil District Court for the Parish of Orleans, State of Louisiana to recover damages for personal injuries and property damage incurred by her when she was involved in an automobile head-on collision.

Upon filing the aforementioned, Roxanne Tannehill specified a jury trial for which she was required to pay a special jury fee of $12.00 and was also required to pay the sum of $96.00 per day, as a jury fee, for each day that the trial consumed; in this case one day. Roxanne Tannehill was also required to post a jury bond to assure payment of the aforesaid indebtedness prior to her being granted a jury trial.

The case was tried before a jury and the jury returned a verdict in favor of plaintiff, Roxanne Tannehill, in the amount of $5,500.00. A motion for new trial by one of the defendants, Trinity Universal, was denied by the district court.

The defendant, Trinity Universal Insurance Company, appealed to the Louisiana Court of Appeal, Fourth Circuit on factual grounds only. The Appeals Court reversed that part of the judgment in favor of the plaintiff and against the defendant, Trinity Universal Insurance Company, and rendered judgment in favor of Trinity Universal Insurance Company, dismissing the plaintiff's suit at her costs on December 2, 1968. A rehearing was applied for upon the specific

Federal question raised here but denied by the appellate court on January 6, 1969.

Plaintiff, Roxanne Tannehill, applied to the Supreme Court of the State of Louisiana for a writ of certiorari or review of the judgment of the Court of Appeals, however, this writ was refused on February 28, 1969. The Federal question involved, that is, the constitutionality of Louisiana's appellate review of facts as well as law as specifically spelled out in the aforegoing questions presented for review was also raised by plaintiff in her application for writs of certiorari or review to the Supreme Court of the State of Louisiana.

ARGUMENT

The commonly called due process clause of the Fourteenth Amendment to the Constitution of the United States of America reads as follows:

> "* * * Nor shall any state deprive any person of life, liberty or property, without due process of law; * * *"

Roxanne Tannehill did have a property right in and to a jury decision on the facts of her case. She complied with Louisiana Statutory law which qualified her for a jury trial, that is, she paid a required jury fee of $12.00, posted a required jury bond of $250.00, and paid the jury's trial fee of $96.00. From that point on Roxanne Tannehill had an absolute right to a jury verdict on the facts as established by the Supreme Court of the

State of Louisiana in *Parish v. Holland* (116 So. 580) wherein that court held:

> "Right to jury trial in proper case is absolute after required cash deposit is made and bond for costs filed, * * *"

Roxanne Tannehill bought and paid for a jury decision on the facts of her case. The Appeals Court, based upon their disagreement with the jury *on a point of fact and not a point of law,* did reverse the jury and effectively deprived her of the jury verdict without due process of law.

How was Roxanne Tannehill denied due process of law? Firstly, it has been held by this Supreme Court that the deprivation of property does not require a physical taking. See, *Mac Innes v. McKay,* 49 S.Ct. 344. Also, this Supreme Court has defined property thusly:

> "The word 'property' in the Fourteenth Amendment embraces all valuable interests which a man may possess outside of himself, — outside of his life and liberty." *Bradley, J. Campbell v. Holt,* 6 S.Ct. 209.

Secondly, since it was not necessary that the jury verdict, purchased with currency and thence something of established value and in which petitioner had a vested property interest, be physically taken from her, we must determine if this deprivation of property was arbitrary or whether it met essential elements of due process of law. We submit that it did not and

that Article VII, Paragraph 29 of the Constitution of the State of Louisiana is repugnant to the due process clause of the United States Constitution because it sanctions factual review and reversal of jury verdicts rendered at the trial level even though the litigants have paid special fees to have the factual issues resolved by a jury.

It is of course basic that due process of law as enunciated in the Fourteenth Amendment means adequate notice, and a hearing, *Orchard v. Alexander,* 15 S.Ct. 635, *Jacob v. Roberts,* 32 S.Ct. 303. The following language of this Supreme Court in *Garfield v. United States* 29 S.Ct. 62, is particularly applicable here:

> "One who has acquired rights by an administrative or judicial proceeding cannot be deprived of them without notice and an opportunity to be heard, for the right to be heard before property is taken or rights or privileges withdrawn which have been previously legally awarded, is of the essence of due process of law."

Roxanne Tannehill did acquire a property right through a valid judicial proceeding. She was not given an opportunity to present evidence or to defend her right to a jury verdict before the Appeals Court. She did not receive due notice of a hearing wherein she could be deprived of that property right. When the defendants against whom the jury verdict of the trial court was rendered appealed said jury verdict and convinced the Appeal Court to reverse the jury, Rox-

anne Tannehill was not then, as she should have been, given an opportunity to present a defense or proof as to why her property right should not have been taken away from her. The Appeals Court arbitrarily, without hearing any factual testimony reversed the jury on said facts, not on a point of law. The jury verdict was taken from her as well as the monetary consideration she had given in exchange for it. Petitioners submit that Roxanne Tannehill was arbitrarily denied due process of law guaranteed to her under the Fourteenth Amendment of the Federal Constitution.

WHEREFORE, the premises considered, petitioner prays that this Supreme Court issue a writ of certiorari or review, to the judges of the Court of Appeal, Fourth Circuit, State of Louisiana, to send up the record of the case to be examined and that this Supreme Court remand the case with instructions to render judgment reversing the Appeals Court and reinstating the judgment of the Civil District Court for the Parish of Orleans, State of Louisiana, the court of original jurisdiction. Petitioner further prays for all costs.

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STATE OF LOUISIANA
PARISH OF ORLEANS

AFFIDAVIT AND CERTIFICATE OF SERVICE

BEFORE ME, the undersigned authority personally came and appeared Donald V. Organ and Donald M. Pierce, who after first being duly sworn did depose and say:

That they are attorneys for Roxanne Tannehill, petitioner in the foregoing petition for writ of certiorari to this Supreme Court; that they have prepared and read the application and that all allegations contained therein are true and correct and copies of this petition, were mailed to Earnest L. O'Bannon and Steven Victory, opposing attorneys of record in this matter herein, as well as a copy to the Chief Justice of the Supreme Court of the State of Louisiana, and copies to the Honorable Godfrey Z. Reagan, Paul E. Chasez and Luther E. Hall, judges of the Court of Appeal, Fourth Circuit, State of Louisiana.

This service was effected by placing copies in the United States mail, postage pre-paid, to all of the aforesaid gentlemen at their offices this ____ day of May, 1969.

DONALD M. PIERCE

Sworn to and subscribed
before me, Notary Public,
this ____ day of May, 1969.

NOTARY PUBLIC